Washington State
Center for Court Research

Dependent Youth Interviews Pilot Program

Engrossed Substitute Senate Bill 6792
Washington Laws, 2008—Chapter 267, Section 12

Final Report to the Legislature
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Dependent Youth Interview Pilot Programs

PROGRAM AUTHORITY AND OVERVIEW

In recent years, there has been increased momentum in Washington State to create ways for dependent youth to be heard by policy and judicial decision makers. A growing number of child welfare professionals believe that critical decisions about residential placement, social services, and visitation with parents are best made when youth have the opportunity to express their preferences and concerns in their own words. To enable youth to actively participate in court hearings where critical decisions about their lives are made, the legislature enacted a bill designed to help each youth speak directly to the judge in his or her case.

In 2008, the Washington State Legislature passed ESSB 6792, establishing a pilot program affording new rights to youth who are 12 years or older and are the subject of a dependency proceeding under chapter 13.34 RCW. Qualifying youth in Thurston, Spokane, King and Benton-Franklin Counties were granted the right to 1) receive notice of the dependency proceedings and hearings that involve them, 2) be present at such hearings, and 3) be heard personally. To express his or her wishes about issues before the court, the youth may also request an in-chambers interview with the judicial officer. The legislation directed the Department of Social and Health Services (DSHS) and the Administrative Office of the Courts (AOC) to collaborate in implementing and reporting on the program's effectiveness. The AOC relied upon its research arm, the Washington State Center for Court Research (the Center), to carry out the responsibilities outlined by the Legislature. No funding was provided for implementation, operation, or evaluation of the pilot program.

Shortly after the passage of the legislation, planning meetings were held with various stakeholders. The meetings took place in July and September, 2008, and participants included representatives from: DSHS Children's Administration (CA), the AOC, the American Bar Association's Center on Children and the Law, the Washington Supreme Court's Commission on Children in Foster Care, the Attorney General's Office, the University of Washington School of Law Children and Youth Advocacy Clinic (CAYAC), and the Court Improvement Training Academy (CITA). Two fundamental objectives were identified at these early meetings: 1) to achieve a common model across all four pilot sites offering a distinct "treatment" of the target youth, and 2) to achieve a feasible implementation approach so that the pilot program would be manageable by the sites and be "owned" by them. A judicial officer in each site would be expected to take leadership for convening participants and establishing the framework for that court's pilot program.

DSHS and the AOC enlisted the assistance of additional advisory consultants to continue development of an implementation plan in late 2008. These included the Superior Court Judges' Association, Casey Family Programs, and the Washington Defender Association. Each of these groups provided insight and suggestions about implementation of the pilot program, and helped sort through numerous court practice issues associated with creating a significant new court procedure.

SUMMARY OF KEY FINDINGS

- Eligible youth attended 55% percent of the pilot program dependency hearings. Youth participated by telephone in an additional five percent of dependency hearings.
- In the hearings surveyed by pilot sites, 18% of eligible youth asked for an interview with the judge. Of youth who came to court for their hearings, 33% took part in an interview.
- Of the youth who reported they asked for an interview, 64% said they "told the judge things I didn't want to say in front of everyone else."
- Judges reported that transportation to the hearings was a problem for youth in 10% of hearings. The report identifies other impediments that may discourage youth from coming to court.
- Among youth who interviewed with a judge, the most common issues for discussion were "visits with biological parents or others" and "permanency."
- Judicial officers who conducted a youth interview reported varying degrees of usefulness in terms of gaining additional perspectives about the dependencies.
- Judges spent a median time of 15 minutes for interviews with youth.
- Youth who came to court reported they missed school in 62% of the hearings. The report identifies various opinions about the conflict between court and school.
- Most youth reported a generally positive experience from their hearing saying they were glad they came to court (77%), that they understood what happened in court (91%), and that the judge made a fair decision (79%). Youth were less likely to agree that court was like they thought it would be and that they knew what to expect before they came.
- Although attempts were made by the pilot courts to mitigate due process concerns associated with ex parte communication, uncertainty persists in this area; procedures for resolving issues relating to due process and closing the courtroom are necessary to continue the youth interview practice.
- Even among experienced judicial officers, training to develop skills for effectively interviewing adolescent youth is a critical component to the practice. Training is also warranted for social workers and others who play a role in helping youth engage with the court.

IMPLEMENTATION PLAN

Pilot Site Visits

In early 2009, the Center designated a project manager for the implementation of the Dependent Youth Interviews Pilot Program. Site visits to each of the four pilot jurisdictions were made soon after to document each court's practices concerning scheduling and management of dependency calendars, *and* to encourage and offer support to judicial officers who would, in turn, enlist the cooperation of local stakeholders. Pilot site stakeholders, in addition to judicial officers, were expected to be court staff, social workers, youths' attorneys, assistant attorneys general, parents' attorneys, Court-Appointed Special Advocates (CASAs), and guardians ad litem (GALs).

The site visits presented the opportunity to more clearly formulate how the specific requirements of the legislation could be implemented, and where potential impediments might exist. A basic profile of each pilot site was developed through the visits, including which judicial officers were assigned to hear juvenile dependency matters, when and where dependency review calendars were scheduled, and whether attorneys, GALs or CASAs were typically appointed for youth 12 and older. The profile laid the groundwork for determining how roles and responsibilities would be assigned in each pilot program.

During the site visits, elements essential to the success of each pilot program were identified. Chief among these was the question of what mechanisms should be in place to ensure that youth were notified of their dependency hearings at the earliest stage (shelter care), and of their right to be present and heard personally – a critical consideration if the intent of the legislation was to be met. Also examined was the extent to which transportation of youth to court was expected to be a problem, recognizing the legislation's specification that the bill was not intended to create an obligation for DSHS to transport the youth.

In light of the legislation's call for "pertinent information" to be compiled regarding the effectiveness of the pilot program, judicial officers and other participants were queried about their ideas for measuring and assessing the dependent youth interview process. The yet-to-be developed survey instruments were discussed, with the sites offering suggestions about what the pilot program should attempt to assess, and ways to collect information that would minimize the impact on the already strained resources of courts.

While judicial leaders in each of the pilot sites had previously communicated with their local stakeholders about the 2008 passage of the legislation, the site visits reinforced the need to develop a more formal implementation plan that all participants would support and collectively move forward. The next step would be to draft a court protocol that would articulate the framework for each court's implementation of ESSB 6792.

Target Population

The target population for each pilot program was youth 12 years of age and older who were the subjects of a dependency action. This included youth in shelter care status (in which a dependency petition had not yet been considered by a court) as well as youth who had been declared dependent by a court. Legally-free dependent youth (whose parents' rights had previously been terminated) were also included in the target group. It was expected that the target population would be a dynamic mix of cases that included youth who had been in dependent status for varying lengths of time and cases that were newly filed during the pilot program timeframe. Target youth typically resided in foster care or another residential facility, or were living with relatives.

Using a data set compiled from the Department's FamLink system, DSHS helped estimate the number of youth in each pilot site who would be targeted by the program.[1] Throughout the pilot program, DSHS provided quarterly updates to the AOC that reflected ongoing dependency cases, newly filed dependency cases, cases in which a youth had "aged in" (turned 12 years of age), and cases that had been resolved and were no longer active. The number of youth in the target population of the four pilot programs was estimated at 1,250.

Types of Dependency Hearings

Court proceedings conducted in dependency cases are defined by RCW 13.34. Pilot program youth were to be advised of their right to attend and be heard at each of the following types of hearings:

1) *shelter care*, held within 72 hours of the placement of a child in custodial care,
2) *fact-finding*, held within 75 days of the filing of the dependency petition,
3) *review*, held at least every six months during the time a child is in dependent care,
4) *permanency review*, held annually during dependent care, and
5) *termination of parental rights,* may be held no earlier than six months after a court has established a dependency.

Snapshot of the Pilot Courts

Thurston County Superior Court handles the majority of juvenile dependency matters at its Family and Juvenile Court location. During the pilot, two superior court judges presided over the pilot program cases. DSHS estimated that the Court had approximately 100 dependency cases that involved a youth aged 12 years or older. The Court relies heavily on appointed CASAs to speak for the best interests of children, and may also appoint an attorney GAL in selected cases. Typically, lawyers representing the stated interest of adolescent youth are appointed only on a case-by-case basis at the discretion of the judge.

Spokane County Superior Court hears the majority of juvenile dependency matters at the Juvenile Court directly adjacent to the main courthouse. Six court commissioners share responsibility for hearing dependency matters. DSHS estimated that the Court had a caseload of approximately 340 cases affected by the pilot program. While the Court relies upon a GAL/CASA for some cases, a lawyer is usually appointed for youth aged 12 and older.

Benton-Franklin County Superior Court is a joint judicial district for the two counties. The Court hears the majority of juvenile dependency matters at its Juvenile Court location in Kennewick, with two court commissioners presiding over most juvenile dependency matters. DSHS estimated that the Court had approximately 130 eligible cases for the pilot program. Youth above age eight are routinely appointed an attorney to represent their interests. CASAs are not typically appointed for the target cases.

King County Superior Court has three locations at which judicial officers may hear juvenile dependency matters; however, the bulk of hearings take place at the Juvenile Court and at the Maleng Regional Justice Center (RJC) in Kent. A judge at the Juvenile Court and a court commissioner at the RJC participated in the pilot program. DSHS estimated that the Court had a caseload of approximately 675 youth aged 12 years or older. For that age group, the Court typically appoints an attorney to represent the youth, while CASAs are usually preserved for younger children.

Developing the Pilot Court Protocol – Framework for Dependent Youth Interviews

Each site approved a protocol intended to broadly depict the steps the pilot jurisdiction would take to ensure that target youth were advised about their hearings and rights.[2] The protocol further outlined the procedures each court would use to accommodate a youth who opted to have an interview with the judicial officer, and it gave direction about how the survey instruments would be used and collected. The protocol was intended to be a starting point for courts to define more specific procedures as each site began implementation.

Three issues emerged that required particular attention as implementation plans moved forward:

Notification of Youth

Section 12 (1)(d) of ESSB 6792 specifies that "Prior to each hearing, the child's guardian ad litem or attorney shall determine if the child wishes to be present and to be heard at the hearing." While this notification could be reliable in some cases, in many dependency actions, neither a guardian ad litem nor attorney is appointed for youth over twelve. Even if a youth is ultimately appointed a GAL or attorney, this may not have occurred by the shelter care stage. Various mechanisms were explored to find additional ways to ensure that youth knew the date and time of their hearings, e.g. adding language to pattern forms used by the court, inserting the hearing notice on the CA's Individual Safety Services Plan (ISSP), and mailing a notice directly to youth.[3] Ultimately, sites determined that the CA social worker was likely to be the most reliable means of advising youth of the court hearing, especially at the shelter care stage. Social workers, who are knowledgeable about the court process and informed of the first scheduled hearing, are often the first official contact youth have when they are removed from parental custody.

To help social workers advise youth about their upcoming court hearings and their right to be present and heard, DSHS collaborated with the AOC in preparing a brochure entitled *Foster Youth and Court Hearings – What do I need to know? Is it even worth it to go*?[4] At regional programs, the CA educated social workers from the pilot jurisdictions about the provisions of ESSB 6792 and trained them on the use of the brochure as a means of advising target youth of their rights. Attorneys and CASAs/GALs could also use the brochure to encourage youth to take part in their court hearings.

Sites anticipated that the existence of a single fail-safe method for notifying youth of their court dates was unlikely, and that without encouragement and support from all professionals with whom the youth interact, they are less likely to be engaged with the court. To reinforce the importance of the notification requirement, pilot site judges were asked to "*convey [their] expectation that **each** participant who interacts with youth shares in the responsibility to make sure youth know about scheduled court hearings, to ask if they would like to attend, and to ask if they would like to speak separately with the judicial officer.*"[5] Successful notification of youth is an imperative threshold step in the effort to elicit the voice of dependent youth.

Location of Interview

The legislation authorizes the court to conduct an interview with the youth "in chambers" to determine the youth's wishes regarding issues pending before the court. It also specifies that the interview be on the record. Holding the interviews in judicial chambers was problematic because court recording equipment is typically unavailable there. The pilot sites considered using hand-held recording devices or installing special computer software in order to hold and record the interviews in judicial chambers. Three sites concluded that the reliability of the recordings could potentially be compromised without using standard courtroom equipment; these sites subsequently held interviews in the courtroom. Two judicial officers in King County conducted the interviews in chambers using a hand-held tape recorder to make the record.

Due Process Concerns

Particular consideration was given to concern expressed by some judicial officers that allowing a youth to speak to the judge outside of open court could be viewed as improper *ex parte* communication. Washington's Code of Judicial Conduct prohibits judges from initiating or considering *ex parte* communications concerning a pending proceeding.[6] While the Code does allow for certain exceptions, such as those made by law, judges are ethically bound to avoid communication that could be perceived as undermining their impartiality or the fairness of the court.

Pilot site judicial officers discussed various techniques for mitigating potential due process concerns resulting from perceived *ex parte* contact. Among other steps, judges were encouraged to thoroughly explain the pilot program's intent to stakeholders, asking for their support of the practices the court planned to implement. In court, judges explained the process, on the record, and asked for parties' consent to the interview with youth. After an interview, judges took the additional step of documenting, on the record, the issues that were discussed with the youth. Because of the significance of this concern, it remained within the discretion of the pilot sites to tailor their procedures to mitigate any remaining ethical concerns raised by parties.

Training Session

Prior to the implementation of the pilot program, a half-day training session was conducted in June 2009 for judicial officers in each jurisdiction.[7] The foci of the training were:

- Adolescent Brain Development;
- Techniques for Effective Communication with Youth in Court;
- In the Fishbowl Role-Playing – Demonstrating Effective Interaction between Judicial Officer and Youth; and
- Facilitated discussion of potential ethical issues and mitigation tools, practical approaches for listening to youth, and age-appropriate methods for engaging youth.

A set of model roles outlining the responsibilities of the judicial officer, youth's attorney, CASA/GAL, social worker, and court staff—based on earlier site visits to each location—was included in the training. A guide for engaging youth in interviews and judicial bench cards (produced by the American Bar Association) were also provided to further help judges prepare for the pilot program.[8]

EVALUATION PLAN

Goals and Objectives

Three broad goals were established to assess the effectiveness of the pilot program[9]:

- Assess the response of youth to the rights enumerated in the legislation.
  - *Objectives include identifying those dependency hearings that affect 12+ youth, determining the number of eligible youth who opt to attend hearings and the number of youth who request an interview with a judicial officer.*

- Assess the perception of procedural fairness among youth who participate in dependency hearings.
  - *Objectives within this goal are to determine the level of satisfaction that youth have with their court experience in general and with their interview with the judicial officer if one occurred.*

- Assess the perception of judicial officers and other participants in dependency proceedings (e.g. counsel for youth, AAG's, DSHS case workers) concerning the efficacy of youth participation in dependency proceedings.
  - *Objectives in this goal include recording the general views of judicial officers and other pilot participants concerning the usefulness of youth participation in dependency hearings and the interview. Experience and comments related to impediments and other considerations will be included.*

Survey Instruments

Two survey instruments were developed for each of the sites to use during a one-year period (June 30, 2009 – June 30, 2010):[10]

1) A youth survey was designed to measure the attitudes and opinions about the experience of youth who attend a court hearing. The survey allowed youth to say whether they had asked for an interview with the judicial officer, and to further characterize that experience.
2) A court reporting survey was developed for each judicial officer to complete after presiding over a hearing in which a youth aged 12 or older was eligible to attend.

Post-pilot Structured Interviews

Near the completion of the pilot program (June 30, 2010), structured interviews were held with program participants at each site. The purpose of the interviews was to glean individual observations and experiences beyond the information reported in the survey instruments, and to document particular insights that would inform future work in the area of engaging youth to more fully participate in the court process.

FINDINGS

Mechanics of the Interview

The procedures leading to an interview with youth were much the same in each pilot program; however certain local nuances emerged. Generally, if a youth's attorney or social worker learned prior to the hearing day that the youth wanted to speak with the judge, she would contact the court clerk or scheduler to inform the judge. While all jurisdictions said it was preferable to know the youth's request ahead of time, the more common pattern was that youth did not voice their request for an interview until the day of the hearing, an occurrence that is probably "unavoidable" according to most pilot participants.

In Benton-Franklin County, judicial officers have a "roll-call" at the beginning of dependency calendars to get a general sense of each case. It was at this stage of the hearing that the judges often learned of interview requests, and could group those cases together, which they reported "worked well." They then used court recess for holding interviews in the courtroom. Thurston County judges reported that if the Court knew in advance, they would begin the calendar with those cases where youth wanted an interview, allowing them to clear the courtroom only once. In King County, a judicial officer developed the practice of telling youth at the beginning of each hearing of their right to an interview, explaining he would return to them later in the hearing to find out if they wished to request time. Spokane judicial officers allowed parties' attorneys to be present for the interview which often mitigated the need to completely clear the courtroom.

Of the 12 judicial officers in the pilot program, ten reported they wore their robe during the interview, while two removed it. Most judges stepped off the bench and sat with youth at a counsel table or on courtroom chairs; however, three said they stayed on the bench. Two judicial officer reported they held the interviews in chambers with the youth and attorney.

Survey Responses from the Court

The 12 judicial officers in the four pilot site locations were asked to complete a court reporting survey each time they presided over a dependency proceeding in which a target youth was involved, regardless of whether the youth was in attendance at the hearing. The pilot sites reported a total of 1,357 hearings during the one year survey collection period.[11] The majority of the hearings were review or permanency planning proceedings. Approximately 75 were shelter care hearings which are required to be held within three days of a youth's removal from parental custody.

Courts reported that a youth aged 12 or older physically attended 55% (746) of the hearings held by the pilot courts. Youth were also allowed to take part in their hearings by telephone, and pilot courts noted that 5% (67) of youth did so. In the total 1,357 hearings surveyed, 18% (244) of eligible youth asked for an interview with the judicial officer. Because a youth could only take advantage of the opportunity to talk separately with the judicial officer if he attended the hearing, it is informative to look at the portion of these youth who interviewed with the judge. Of the 55% of youth who opted to come to court, 33% (244) had an interview.

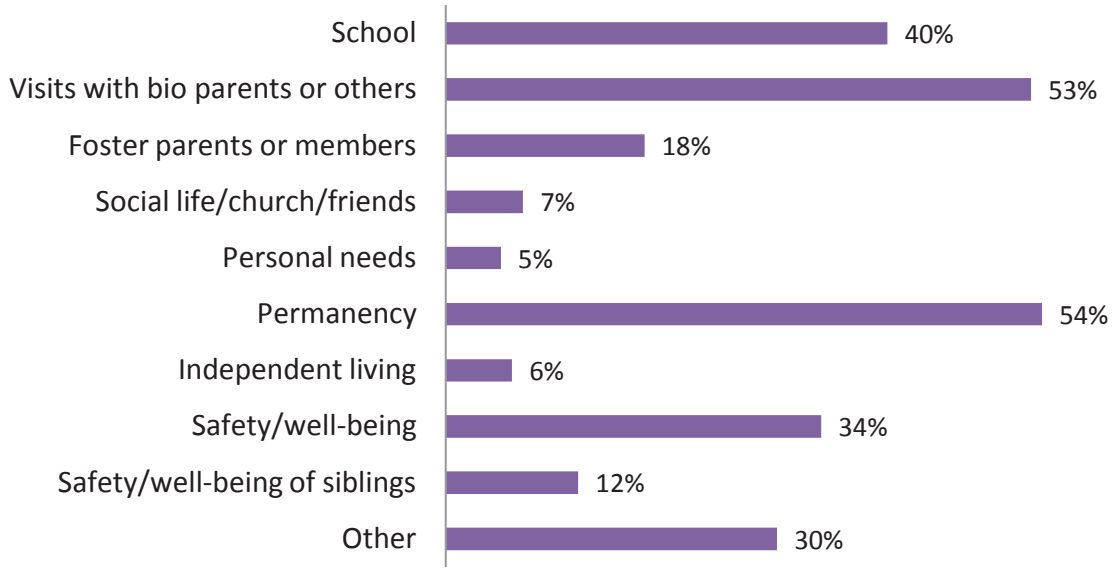
Judicial officers were asked to inquire of parties at the hearing *who* had advised youth of the proceeding. It should be noted that the responses likely included anyone who told youth of the date and time of the hearing, made a follow-up contact, or simply encouraged youth to attend. The responses indicate that it was common for more than one party to play this role. As anticipated, social workers were listed as the most common source of notification to the youth. Social workers told youth about their court date in 76% of the hearings across all pilot sites. The youth's attorney was listed as the next most common source (in 73% of hearings). Foster parents were listed as advising youth in 22% of all pilot site hearings. In 7% of hearings, "mom", "dad", or "parents" were identified as telling youth about the hearings. In Thurston County, where attorneys are not typically appointed for youth, CASAs/GALs played a role in notifying youth in 54% of hearings.

Judicial officers reported that in 86% of hearings there was no transportation or other logistical problem that prevented youth from attending the hearing. In the 10% of cases where a problem was identified, the most prevalent reason was that the youth resided or was traveling out of town, or the youth was incarcerated or receiving inpatient treatment.

Pilot courts were asked to list the various concerns raised by youth during requested interviews. The most common areas of discussion were "visits with biological parent or others" and "permanency" issues, raised in 53% and 54% of interviews respectively. Youth raised "school" and "safety/well-being" issues in slightly over a third of all interview sessions (see Exhibit A).

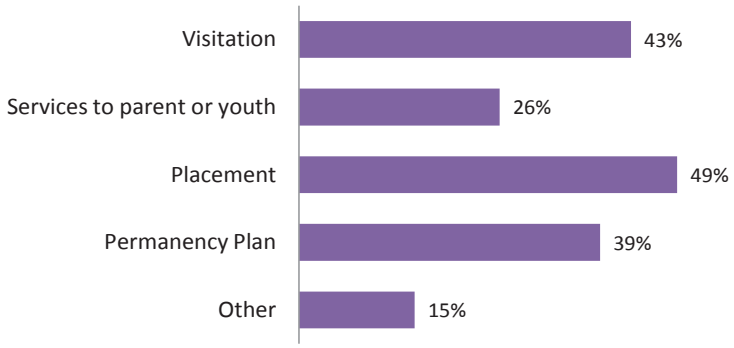
Judicial officers reported on the overall usefulness of their interview with youth by characterizing whether they gained an additional perspective or better information about the issues pending before the court. For 35% of the interviews, judges described their experience as being "a

Exhibit A: Areas of concern raised by youth during interviews.



little useful," 40% of interviews were reported as "quite useful" and in 25% judges reported the interview to be "very much useful." Judges noted that placement and visitation were among the most common areas in which they gained a better perspective about the youth's dependency case (see Exhibit B).

Exhibit B: Areas in which judges noted gaining a better perspective through interviewing.



Lastly, judges documented the amount of time they spent in the interviews with youth. The range of time reported was from one to 45 minutes. The median time spent by judges was 15 minutes for each interview.

Survey Responses from Youth

Youth who attended their court hearings were asked to complete an anonymous survey before leaving the courthouse. Court staff at the pilot sites submitted 551 surveys completed by youth during the one year data collection period. Based on the number of reported hearings and the number of youth who attended those hearings, this represents a return rate of 74% for the youth survey.

Consistent with the report from the pilot courts, youth most frequently named their social worker as the one who told them about their hearing (62%), followed by their attorney (60%). Youth said that a foster parent told them about the hearing in 42% of cases, and a parent told them in 10% of cases. In Thurston County, youth named the CASA/GAL assigned to them in 50% of cases.

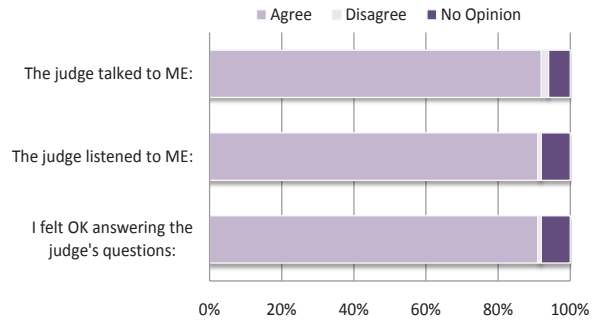
When asked who brought them to court, youth reported that a foster parent transported them to 53% of hearings while social workers drove them to 19% of hearings. Youth said a parent brought them in 9% of cases, and a "relative" in 4%. In 3% of hearings, the youth came to court by bus.

Sixty-two percent of youth who came to their court hearing said they had missed school to attend. For those who came to court, 66% of youth said they "talked to the judge during the hearing." Twenty-one percent of youth said they did not talk to the judge at all. When asked whether it is hard to talk to the judge in front of everyone, 29% of youth agreed with the statement, 47% disagreed, and 23% had no opinion.

Of the youth who said they talked to the judge separately "without everyone there," 64% of youth said they "told the judge things I didn't want to say in front of everyone else." Fourteen percent disagreed with that statement, while 23% had no opinion. Of those who responded that they had not talked to the judge separately, 90% said the most important reason was that they "didn't want to." Other choices were I "didn't know I could" (2%) and I "wasn't given a chance" (9%).

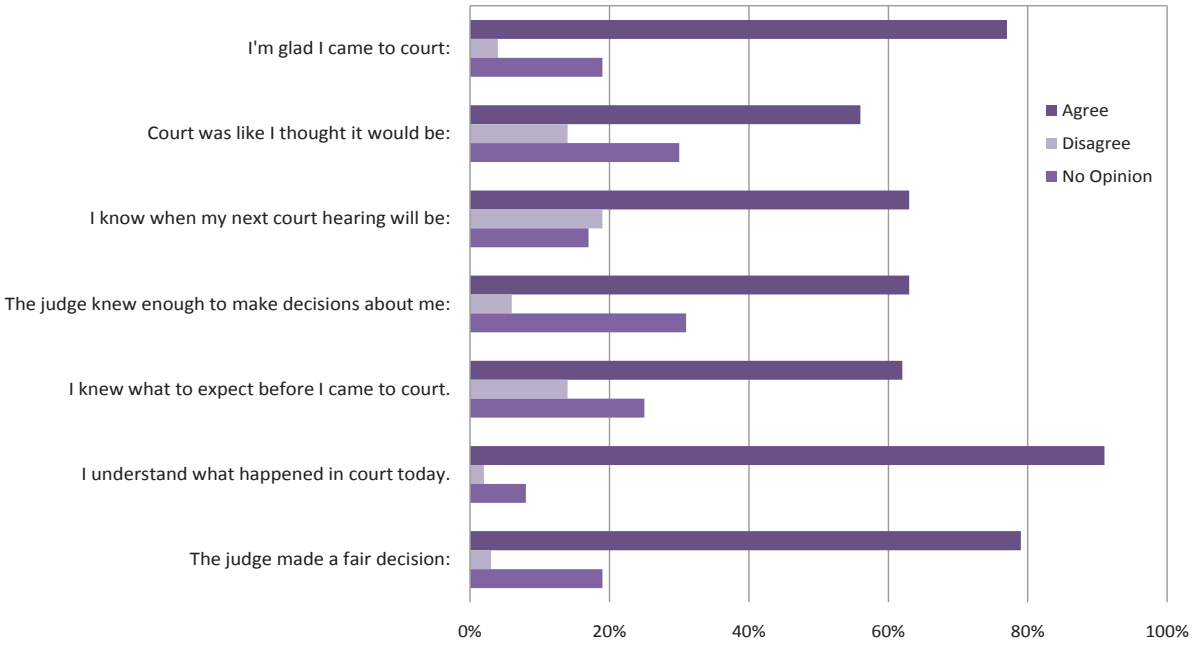
Youth who said they "talked to the judge today," whether during the hearing or in an interview, were asked to characterize their interaction, agreeing or disagreeing with three statements: 1) they felt the judge had talked directly to them, 2) the judge listened to them and 3) they felt OK answering the judge's questions. Responses reflect greater than 90% agreement with these statements (See Exhibit C).

Exhibit C: Responses from youth who talked to the judge either in the hearing or in an interview.



A series of questions on the survey were designed to gauge the experience of youth attending a court hearing. The questions address youths' perception of fairness and their understanding of court process and decisions. Well over half of all attending youth agreed with positive statements about their court experience. For example, 77% were glad they came to court; 79% agreed the judge made a fair decision; and 63% said the judge knew enough to make decisions about them. There was less agreement with the statements "court was like I thought it would be" (56%) and "I knew what to expect before I came to court" (62%) (See Exhibit D).

Exhibit D: Responses from youth on their court experience.



CONCLUSIONS

Notifying Youth about their Court Hearings

The underlying objective of the dependent youth interview program legislation was to explore the means for a court to hear the "child's wishes"—to hear the voice of youth directly in court sessions. It was immediately evident to those who planned its implementation that the pilot program must ensure that youth were being notified and encouraged to come to court, for without a youth's attendance, his or her *own* voice would not be heard. With 55% of adolescent youth opting to attend their hearings, courts are headed in the right direction, but more can be done.

Pilot sites were correct in spreading the responsibility for notification among anyone who had an opportunity to interact with the youth. The pilot courts and youth noted that in many cases, more than one party told them about their court date. However, one social worker stated in a structured interview that he could do a better job of encouraging youth if he had a "better set of words to use to explain why it's so important." A GAL commented that foster parents play a key role in encouraging youth to go to court, and should be better educated about the importance of youth participation in hearings.

One judicial officer noted that the survey prompted him to develop the habit of asking at the hearing who had advised youth, and he was initially surprised to learn that no one had, so "I plan to continue asking." Regarding the practice of asking in open court who had told youth about the hearing, another judge simply put it, "if the parties know it matters to the judge that a youth is present, it will become important to them too."

"If the parties know it matters to the judge that a youth is present, it will become important to them too."

While most judicial officers, social workers, lawyers and other participants expressed a commitment to the philosophy of youth engaging directly in their hearings, it was not without qualification. A social worker acknowledged that if a youth doesn't want to come to court, "I don't push it." Another said she encourages youth to come when they "disagree with the case plan." Another said it was less important than school if it's "just a review hearing with no major issues." Several judges also questioned the need to have youth present at every hearing, especially if it involved missing school to attend. Clearly, this is a threshold question that will benefit from continued discussion.

Factors that Discourage Youth from Attending Court Hearings

Courts reported that in 86% of the hearings, transportation was not a significant impediment in getting youth to court, and youth described a variety of successful means for getting themselves to the courthouse. In the structured interviews with pilot program participants other barriers *were* identified. Some social workers identified low interest and a lack of understanding about why court is important as the most significant reasons youth choose not to come. This, coupled

with long waiting times when youth *do* attend, appear to be significant impediments to court participation. "The longer kids have to wait at court, the less likely they are to want to come back," said one youth lawyer, "and if you make them wait very long, you better at least feed them something." Several of those interviewed suggested courts should try to group hearings involving older youth at the beginning of a calendar to reduce the waiting time for these cases. A youth attorney said she and lawyers like her are in a position to help the court prioritize cases where a youth is present.

Several social workers and judicial officers commented about the particular challenge of getting legally-free youth (those whose parents' rights have been terminated) to participate in their hearings, suggesting that when older youth believe adoption is unlikely, they are less apt to see court participation as useful. Those interviewed about this topic observed that this group of vulnerable pre-adults could especially benefit from the empowerment that judicial interest and guidance offer. Ways to effectively encourage legally-free youth to stay engaged with the court should be considered.

"If you make [the kids] wait very long, you better at least feed them something."

Regarding the conflict between going to school or to court, youth reported they missed school in 62% of the pilot site hearings. Thirty-eight percent of the hearings attended did not require youth to miss school, most likely due to the summer months included in the year's study. The extent to which school was viewed as an impediment to court attendance varied among those interviewed. Some social workers observed that school *is* the biggest barrier, noting that many youth are already behind in school and don't want to get further behind by missing school to come to court. One said that youth are "victimized" all over again when hearings are set during the school day forcing them to choose between court and school. One judge commented that while school is an impediment, kids *need* to be in school and not treated differently just because they're involved in a dependency. Both judicial officers and social workers were quick to acknowledge that continuances are always an option to accommodate youth who cannot come to court because they want to be at school on a particular day.

In the structured interviews judicial officers were asked about the feasibility of scheduling hearings for older youth after school hours. While the majority of judges replied they would be willing to consider restructuring their calendars to allow for this, many were doubtful that it would work well or be justified. Judges noted the frequent placement of older youth in more distant locations, which could make late afternoon scheduling inconvenient for foster parents and social workers. They also acknowledged an end-of-day fatigue factor that could negatively affect court participants in family proceedings. In general, judges were skeptical about the benefit that could be expected, given the disruption to other calendars and court obligations. An examination of how other states have addressed this challenge could be informative, especially if there are courts that have tested whether youth participation increased by scheduling court hearings after school.

The survey asked the youth "is there anything that could have made today's hearing better for you." Some of the youth responded that they thought the hearing went "pretty well," while others said they would have liked snacks. Other responses included:

"If my mom and siblings were here."

"No, but I want to go to the witness stand next time."

"A chance to talk more."

"Don't judge me."

"I'm just hoping I can get the move and a new start sooner rather than later."

"I would like to have my mother present at today's hearing and have her know how I really felt as I testified."

"If I had gotten to see my sisters or my parents, or if I had gotten to bring my cat to my foster home."

"Just the wait was too long. I was here at 8:20 and wasn't in court until 11:20."

"Not being so scared; not having to keep coming back to court and fighting for what's right; not having to wait so long."

"Mom showing up like she said she would."

"I would like to stay in foster care permanently."

Youth Voices – Talking to the Judge

Among the youth who attended their court hearing, 66% said they "talked to the judge during the hearing." While this interaction undoubtedly included simple responses to the judge's questions rather than comprehensive conversation, it does indicate that many judicial officers are making a point to acknowledge youths' presence and directly address them in open court. Several judges offered their belief that it empowers youth just to see that the court is interested in hearing from *them* directly, even if they have appointed counsel. A social worker interviewed said that "kids feel powerless…if their voice is heard, it benefits them." Another described this population as bruised and needing a voice in court.

Less than one-third (29%) of youth attending hearings said that it was hard to talk to the judge in front of everyone. However, of those that went on to speak with the judge separately in an interview (33%), nearly two-thirds (64%) said they told the judge things they didn't want to say in front of everyone else. This would indicate that about one out of every five (21%) youth who attended their hearing believe the interview enabled them to express something to the judge they would not have said openly.

From the pilot courts' survey results, essentially all judicial officers in the pilot program reported that the interview with youth was useful in giving them additional perspective about issues before the court. While this does not necessarily mean that judges learned new information outside of what had been presented in court (in fact many judges said they typically did not), it is evidence that judicial officers view the opportunity for increased engagement with youth to be beneficial to them as they consider a family's future.

Youth Satisfaction with the Court Experience

Most youth report a generally positive experience from their hearings, with 77% saying they were glad they came to court, that they understood what happened

in court today (91%), and that the judge made a fair decision (79%). Of particular note was the high level of agreement among those youth who said they talked to the judge in open court, or separately in an interview. Over 90% of these youth report that the judge *listened to them.*

However, when asked if court was like they thought it would be, only 56% agreed, and only 62% said they knew what to expect before they came to court. The rest either had no opinion or disagreed, indicating there is considerable work to be done in helping youth understand the role of the court in their lives.

While the focus of this pilot program has been on the youth interview process, the significance of a judge directly engaging with youth in open court cannot be overstated. One-on-one communication between the judge and youth, as part of the hearing, sends a compelling message about the value the court places on what an adolescent has to say. While the more private interviews are also a clear indication of the court's interest, the practice of direct interaction with youth, in the court hearing, should be considered as a best practice for all courts.

Due Process Concerns

Throughout the pilot program, judicial officers took a variety of steps to mitigate due process objections and the perception of ethical breaches arising from their interviews with youth. All jurisdictions fully explained the objectives of the legislation and asked for parties' support in experimenting with youth interviews. When a youth requested an interview, judges asked for the parties' consent to the interview with youth and assured parties that they would describe on the record any issues discussed with youth that could be seen as affecting their decisions in the case. All jurisdictions placed the interview on the record which could then be accessed by other parties. The Spokane pilot program was unique in that all parties' attorneys were present during the interview with youth, while parents and others were asked to leave the courtroom.

Despite these precautions, lingering concerns in this area persist among pilot program participants. In the structured interviews, a youth's attorney mentioned that she sometimes felt a little "uneasy" being present in the interview because she knew that other lawyers didn't like it. Another youth lawyer said that as a youth advocate she was definitely supportive of the interview, but "as a parents' attorney, not so much." Yet another said she worried her clients might discuss issues that could raise criminal implications, a situation that would be problematic for both the judge and the youth. A social worker commented that while he was supportive of giving youth a greater voice in court, "it doesn't always seem fair that only youth have direct access to the judge." Other social workers worried that judges might be "swayed" by something the youth said that might not even be true.

Among judicial officers, many were satisfied that they had successfully mitigated concerns among the parties; however others were less confident. One judge in particular noted his view that the use of an ex parte interview with youth in a fact-finding proceeding held to establish a dependency or terminate parental rights is inconsistent with the rules of evidence which are applied to those proceedings.

One experienced commissioner said that in several cases he noted objections from parties on the record before proceeding with an interview. And, he voiced a concern with the extra time that would be needed if the court is required to conduct a "Bone-Club" inquiry each time a youth requests an interview with the judge. This process has been established by case law to ensure that courts make careful and deliberate decisions when considering closing a courtroom to the public. Courts have a constitutional obligation to conduct judicial business openly, and judges are keenly aware of their responsibility to ensure public access to the courts unless there are distinct factors that warrant confidential proceedings.[12]

Another judge expressed apprehension about a situation where "youth potentially have greater influence over decisions than others." Yet another said she was concerned about the "extra weight" the interview gives the youth viewpoint, saying "it doesn't feel right." These comments reflect the sensitivity judges understandably have about a practice that could call into question their impartiality or fairness.

In this discussion it is relevant to note that the Washington State Supreme Court has recently adopted amendments to the Code of Judicial Conduct which will significantly alter the rules about ex parte communication. While the Code continues to bar ex parte communication concerning a pending or proceeding, the amendments, which go into effect in January 2011, loosen restrictions on certain types of cases. Washington's Code is based upon the American Bar Association's (ABA) Model Code of Judicial Conduct.

Rule 2.9(A)(1) of the amended Code states that "When circumstances require it, ex parte communication…pursuant to a written policy or rule for a mental health court, drug court, or other therapeutic court, is permitted" as long as certain provisions are met.[13] The Code's new commentary explains that a judge may "initiate, permit, or consider ex parte communications expressly authorized by law, such as when serving on therapeutic or problem-solving courts, mental health courts, or drug courts. In this capacity, judges may assume a more interactive role with parties, treatment providers, probation officer, social workers and others."[14]

In a recent article published in *ABA Child Law Practice* regarding the Code changes pertaining to ex parte communication, author Jessica R. Kendall states that while there is no specific mention of dependency cases in the new rule, "various aspects of dependency court practice and court proceeding are consistent with the 'therapeutic' or 'problem solving' approaches of the referenced courts. As such, the spirit of this language suggests that dependency cases may be an area where ex parte communications would be favored."[15]

Kendall lists a set of best practices for courts to consider when they offer youth the opportunity to interview with the judicial officer:

- Seek the consent of all parties
- Keep a record of the conversation that is available to all parties
- Allow attorneys to be present, even if parties (parents) are excluded
- Clarify on the record the impact of any information provided by the child on judicial determinations later made by the court
- Provide the parties with a list of questions and/or topics to discuss with the child in chambers

In addition to the practices above, other fundamental aspects of the interview between judge and youth must be established. Some judges were concerned that youth could not reconcile the quasi-private nature of the interview with the fact that it was not a confidential conversation. They were also worried about communications that, in their judgment, required them to "take an immediate action," such as a perceived safety issue. The pilot program has clarified that the interview cannot be considered a confidential exchange. Judges must become skilled and comfortable conveying this to youth. Judges must also be confident knowing that if they learn something in the interview which they believe requires action, the same tools that are available in open court may be used. While judges who participated in the pilot rarely learned new information requiring immediate action, they may, if the situation arises, order an emergency hearing or evidentiary proceeding, order social or medical services, or respond in any way that is warranted in their judgment.

The structure and process for ex parte judicial interaction with parties is an evolving area, as reflected by the new Code of Judicial Conduct. The results of the pilot program along with experience in therapeutic and problem-solving courts will hopefully be useful in guiding future practice in dependency cases.

Training Requirements for Judicial Interviews with Youth

All 12 judicial officers involved in the pilot program were experienced in presiding over juvenile dependency matters, most with over a decade of time handling these cases. Yet, virtually all pilot judges acknowledged the need for specific training to develop their skill at engaging youth in an interview setting *and* in the courtroom. Judges mentioned the usefulness of mock interviews to demonstrate various judicial styles in relating to youth, and the need to learn culturally relevant language. One commented, "I don't want to talk like a teenager, but I do want to avoid words that are outdated or have 'hidden' meanings." Attorneys noted that judges could phrase questions better to more quickly break the ice and prompt youth to talk. Several judicial officers mentioned the difficulty of "slowing down" to really communicate with youth in an unrushed way while in the middle of a pressing court docket. A social worker commented that more skill in "pacing" the interview would be helpful so that judges can quickly have a meaningful interaction without taking more time than necessary.

Training to reinforce the importance of ground rules for the interview is clearly a significant area for future focus. Judges were concerned about how to manage the expectations of youth who ask for an interview, and as mentioned in detail above, how to manage the ex parte concerns associated with this new practice.

Finally, several social workers said they needed to learn how to better explain the importance of participating in court hearings in words that would resonate with youth.

Resource Impact

Pilot program social workers reported little impact on their responsibilities, particularly with regard to transportation of youth, with most saying they, "already pick up kids for court." While several social workers said they had extra waiting time while judges conducted interviews, they described the time as minimal, and said they often could do other work while interviews took place in the courtroom.

Most pilot program judicial officers noted the additional time that would be required for youth interviews on an ongoing basis. While judges in the pilot courts generally voiced their support for more direct engagement with youth, multiple interviews of even 15 minutes each *will* affect a court's workload on a day-to-day basis. As an example, Benton-Franklin County's practice of holding interviews during the court recess might not be a workable approach in the long term, especially if requests from youth increase. It *does* take more time, said one judicial officer, but "most best practices do."

Several attorneys and judges commented that a mix of alternatives for hearing the voice of youth should be employed by courts, rather than requiring the interview option as the only approach. For example, direct, eye-to-eye conversation between the judge and youth in open court can send a clear message of empowerment – telling youth that judges value and expect their participation in equal measure with other parties. Also mentioned was the idea that youth attorneys can help their clients write a letter to the judge, or as an attorney in King County described, "I help my youth clients write a statement of what they're feeling about their situation and what they want." This declaration is then filed as a "report to the court."

Future Research

Improved understanding of the effects of the various advocacy roles on adolescent youth may result from more research. In jurisdictions where a lawyer is provided for older youth, judges are uniformly convinced of the benefits of the practice, both to the youth and the court. Some judges and social workers believe there is a faster move to permanency when youth have an attorney. However, one judge expressed a sentiment shared by most in the pilot program: "Without a strong advocate—if not an attorney, then someone else who will be their escort, hold their hand, and calm their fears—most youth will not effectively engage with the court." Further investigation into the question of who can best play this role would be valuable.

Identifying dependency cases involving youth of color and assessing their court experience is another area for future research. A closer look at the experiences of these youth could offer insight about particular ways to engage and serve this population of dependents.

Finally, the experience of the pilot courts suggests that there are steps that can be taken to reduce the barriers that discourage youth from attending their court hearings. More precise hearing schedules and holding court after school hours are two examples of how this may be accomplished. All juvenile courts should be encouraged to examine the rate at which adolescent youth attend hearings and consider practical ways to increase their participation.

In consequence of the absence of funds to implement the pilot program or conduct the evaluation, the goals and objectives for this assessment were narrowly defined. For example, there was no attempt to look at outcome data in this assessment, yet the fundamental question that is raised by work in this area is: to what extent can youth involvement affect the longer-term outcomes for dependencies? The primary outcome goals for youth in foster care are shortening temporary stays and achieving permanency in an environment that will best allow the youth to flourish. Given the opportunity to lend their voices to the court process, youth have the potential to shed some light, from their unique perspective, on how this may best be achieved.

Citation: McLane, Janet (2010). *Dependent Youth Interviews Pilot Program.* Olympia: Washington State Center for Court Research.

Endnotes

For convenience, some of the materials referenced in this report have been combined into one document titled DYI Supplemental Materials, and have been made available online at www.courts.wa.gov/wsccr/pubs/DYISupplementals.

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[1] The data set supplied by the Department of Social and Health Services contained cases with a LegalStatus code of 1) dependent, 2) dependent-legally free, 3) parental custody-continued court action, 4) protective custody, and 5) shelter care.

[2] Pilot court protocol included in DYI Supplemental Materials.

[3] A list of mechanisms for notifying 12+ youth is included in DYI Supplemental Materials

[4] The brochure *Foster Youth and Court Hearings—What do I need to know? Is it even worth it to go?* is available online at www.courts.wa.gov/newsInfo/content/pdf/FosterYouthCourtHearingBrochure.pdf and in the DYI Supplemental Materials document.

[5] Responsibilities of Pilot Program Participants is included in the DYI Supplemental Materials document.

[6] Washington Code of Judicial Conduct Canon 3(A)(4), effective until December 31, 2010.

[7] The *Engaging Adolescents in Court Hearings* training program is included in the DYI Supplemental Materials document.

[8] The brochure, Engaging Youth in Interviews—A Guide for Judicial Officers is included in the DYI Supplemental Materials document.

[9] Goals and Objectives is included in the DYI Supplemental Materials document.

[10] The Survey Instruments are included in the DYI Supplemental Materials document.

[11] Cases in which a dependency is established are required to be reviewed in open court at least every 6 months. Some pilot program dependency cases were expected to have more than one hearing during the one year data collection period. Calculated from the court reporting form submitted by pilot program courts, 1,357 dependency hearings were conducted during the one year data collection period. It should be noted that this number is less than the actual number of hearings held among all pilot target cases for several reasons. For example, a certain level of underreporting was to be expected as judicial officers occasionally neglected to complete the reporting form or submitted unreadable forms. Also, to effectively manage the pilot program in King County, eligible cases to be surveyed were limited to the RJC and one judicial department at the juvenile court.

[12] A fundamental means by which courts remain accountable to the public for their decisions is to conduct court proceedings openly. Case law has established specific factors that courts must explicitly consider before closing proceedings. State v. Bone-Club, 128 Wn. 2d 254; Allied Daily Newpapers v. Eikenberry, 121 Wn. 2d. 205

[13] Washington Code of Judicial Conduct Canon 2.9(A)(1), amended effective January 1, 2011, is included in the DYI Supplemental Materials document.

[14] Washington Code of Judicial Conduct Canon 2.9, Comment 4, amended effective January 1, 2011, is included in the DYI Supplemental Materials document.

[15] Jessica R. Kendall, *Ex Parte Communications between Children and Judges in Dependency Proceedings*, ABA Child Law Practice, Vol. 29 No. 7, September 2010.

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